IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1734 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANIBEN MADHAVLAL DALWADI & 6 - Petitioner(s)
Versus
VADODARA MUNICIPAL CORPORATION & 2 - Respondent(s)

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Appearance :
MR VIKRAM THAKOR for Petitioner(s) : 1 - 7.
None for Respondent(s) : 1,
MS MAYA DESAI,for Respondent(s) : 2,
MR DIPEN DESAI, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 07/05/2007

ORAL JUDGMENT

1. Shri Vikarm Thakor, learned counsel for the petitioners; none for the respondent no.1; Ms.

Maya Desai, learned counsel for the respondent no.2; Shri Dipen Desai, learned AGP for the respondent no.3.

2. By this petition, the petitioners-erstwhile owners of Survey No. 383 are challenging the correctness, validity and propriety of allotment of Final Plot No. 101 which was carved out of the original Survey No. 383, and are also challenging the impugned notice dated 24.2.98, requiring the petitioners to hand over possession of the land over which construction exists, which, according to the petitioners could not be included in the Scheme and as the land in dispute, that is, Survey No. 383 was having construction over it, the land could not be included in the Scheme.

3. Submission of the learned counsel for the petitioner is that out of original Survey No. 383, Final Plots No. 61, 63 and 101 have been created and some land has gone in development of the road etc., according to him, Final Plot No. 101 could not be allotted in favour of any third party.

4. Ms. Maya Desai, learned counsel for the respondent no.2 and Shri Dipen Desai, learned AGP for the respondent no.3 submit that provisional Town Planning Scheme was not challenged by the petitioners by filing any objections, they did not even challenge the final Scheme and in view of the non-challenge, the Scheme was finalized. Once the Scheme is finalized, then, under Section 65[3] of the Gujarat Town Planning and Urban Development Act, 1976, it would become part of the Act. According to them, if the respondents are acting in accordance with law by demanding possession or making allotment on the ground that the property had vested in them, then, notice or the allotment cannot be challenged in these proceedings.

5. Section 65[3] of the Act clearly provides that on and after the date fixed in the notification to be issued by the Government, the preliminary scheme or the final scheme, as the case may be, shall have effect as if it were enacted in the Act. Once the Scheme becomes part of the Act,

then, vires of the Scheme would be required to be challenged. Undisputedly, even in these proceedings, validity of the Scheme has not been challenged. If the Scheme has become final and has obtained status of the part of the Act and the authorities are acting in accordance with the Scheme, then, the petitioners would not be entitled to say that Final Plot No. 101 cannot be allotted in favour of anybody nor would they be allowed to say that in view of Section 45 of the Act because of the existing construction, the property could not be included in the Scheme for reconstitution of the plots.

6. The petition deserves to and is accordingly dismissed. Rule is discharged. There shall be no orders as to costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

pirzada/-